

# HOUSE BILL REPORT

## HB 1393

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### As Reported by House Committee On:

Criminal Justice & Corrections

**Title:** An act relating to first-time offenders.

**Brief Description:** Expanding the first-time offender waiver.

**Sponsors:** Representatives O'Brien, Moeller, Delvin, Sullivan, Kagi, Cooper, Simpson, McIntire, Flannigan and Darneille.

### Brief History:

#### Committee Activity:

Criminal Justice & Corrections: 2/5/03, 2/14/03 [DP].

#### Brief Summary of Bill

- Expands the First-Time Offender Waiver Program to include all first-time offenders convicted of drug offenses who the court feels to be in need of treatment.
- Authorizes the resentencing of certain drug offenders currently serving prison terms who would have otherwise been eligible for the First-Time Offender Waiver Program had the new eligibility requirements been in effect at the time of their sentencing.

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### HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

**Majority Report:** Do pass. Signed by 4 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Kagi and Lovick.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Mielke, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; and Pearson.

**Staff:** Yvonne Walker (786-7841).

### Background:

A first-time offender is considered any person who has no prior convictions for a felony and is eligible for the first-time offender waiver. The "First-Time Offender Waiver"

(FTOW) is an alternative sentencing option to the standard range for certain first-time offenders.

An offender may qualify for the FTOW if he or she has not participated in a program of deferred prosecution for a felony in the past and he or she has not been convicted of :

- A violent or sex offense;
- Manufacturing, delivering, or possessing with intent to manufacture or deliver a schedule I or II controlled substance that is a narcotic drug (e.g., opium or cocaine) or flunitrazepam classified in schedule IV;
- Manufacturing, delivering, or possessing with intent to manufacture or deliver methamphetamine, its salts, or isomers; or
- Selling for profit any controlled substance or counterfeit substance classified in Schedule I (e.g., heroin), except leaves and flowering tops of marihuana.

In sentencing a first-time offender the court may waive the imposition of a sentence within the standard range and may impose an alternative sentence. Choices available to the court include:

- Imposing up to 90 days of confinement in a facility operated or utilized under contract by the county;
- Requiring that the offender refrain from committing new offenses; and
- Requiring up to one year of community supervision which, in addition to crime-related prohibitions, may include requirements that the offender perform any one or more of the following: (1) devoting time to a specific employment or occupation; (2) undergoing available outpatient treatment for up to two years, or inpatient treatment not to exceed the standard range of confinement for that offense; (3) pursuing a prescribed, secular course of study or vocational training; (4) remaining within prescribed geographical boundaries and notifying the court or a community corrections officer prior to any change in the offender's address or employment; (5) reporting as directed to the court and a community corrections officer; and (6) paying all court-ordered financial obligations or performing some community service work.

If an ongoing treatment program continues after the first year of the offender's community supervision, supervision may continue until the end of treatment. In total, community supervision under the FTOW may not exceed two years.

A court's decision to impose the FTOW on a first-time offender cannot be appealed by the prosecutor or defendant.

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### **Summary of Bill:**

The First-Time Offender Waiver Program is expanded to generally include any first-time offender convicted of a drug offense who the court feels to be in need of treatment.

The court may waive imposition of the standard sentence for a first-time drug offender and may impose the FTOW if the court deems that the offender is in need of treatment for the drug offense and the offender is convicted of:

- Manufacturing, delivering, or possessing with intent to manufacture or deliver a schedule I or II controlled substance that is a narcotic or non-narcotic drug; or
- Selling for profit of any schedule I controlled substance or counterfeit substance.

In addition, the court may also impose the FTOW to any offender who:

- Is determined by the court not to be in need of treatment for drug abuse;
- Is otherwise eligible for the first-time offender option; and
- The court determines that he or she had a minimal role in the offense, acted under duress not constituting a defense, or that there were other strong mitigating circumstances leading to his or her crime.

Any offender currently serving a prison term since July 1, 1988, and who would have been eligible for the expanded FTOW under the new terms, had it been in affect at the time of sentencing, may request review by the sentencing court. The request for review must include a presentation of an appropriate proposed course of treatment. The offender may be resentenced to the FTOW option with a drug treatment program that is acceptable to the court.

Offenders convicted of a violent offenses or a sex offense continue to be ineligible for the FTOW.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** A report by the Sentencing Guidelines Commission showed that in cases where people are incarcerated for long periods of time that recidivism is much higher than when people are incarcerated for short periods of time along with treatment.

Currently, courts have the option of sentencing a person to a drug court or the Drug Offender Sentencing Alternative (DOSA) program; however, these programs are still quite expensive as compared to the FTOW. Implementation of this bill will give the courts one more option for sentencing. In this time of a severe budget crisis this bill is a very responsible sentencing alternative for drug offenders and it still keeps public safety in mind as well.

It is hoped that the resentencing portion of the bill can be absorbed within the

Administrative Office of the Courts' current budget.

**Testimony Against:** There are only two reasons to try to do this bill and that is: 1) to try to enhance the option for a treatment sentence; or 2) to deal with the first-time offender that is less involved or has a low level in the drug offense. Currently, drug dealers have two alternative sentencing options: drug courts or the DOSA, which are both programs that provide treatment. Last year the Legislature reduced the sentences for drug dealing and now under this bill they will be eligible for a FTOW. People who sell or deal drugs should have to serve time in jail or prison. This bill is not necessary given the changes the Legislature has already done with drug court and the DOSA program.

**Testified:** (In support) Representative O'Brien, prime sponsor; Martha Harden, Superior Court Judges Association; and Bill Jaquette, Washington Defenders Association.

(Opposed) Tom McBride, Washington Association of Prosecuting Attorneys.